FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2959 OF 2003
WITH
WRIT PETITION NO. 2960 OF 2003
WITH
WRIT PETITION NO. 2961 OF 2003
WITH
WRIT PETITION NO. 2962 OF 2003
WITH
WRIT PETITION NO. 2963 OF 2003
WITH
WRIT PETITION NO. 2964 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. R.A. Thorat with Mr. S.M. Shelar for Petitioner.

Mr. A.H. Palekar, A.G.P. for Respondent Nos. 1 and 5 to 6.

Mr. S.G. Surana for Respondent No. 2.

Mr. A.Y. Sakhare, Sr. Advocate with Mr. Anil Mishra for Respondent No. 8.

Mr. D.S. Sakhalkar for Respondent No. 7.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 13, 2005

P.C.

. Petitioners by the present Petition impugns the order dated 26.2.2002 whereby the appellate authority under the provisions of the Maharshtra Slum Area (Improvement, Clearance and Development Act), 1971 dismissed the appeals. It is the contention of the

Petitioners that their structure stood on C.T.S. No. 1830 and C.T.S. No. 1832. The learned counsel draws my attention to the slum notification wherein clearly the areas covered by the C.T.S. No. 1830 and 1832 have been declared as slum area. It is therefore, pointed out that once the land on which the structure stood has been declared as slum area, the slum scheme in so far as that area is concerned, is clearly illegal and consequently the respondents cannot proceed to construct on the land on which their structure stood.

. On the other hand on behalf of the respondents their learned counsel points out that the issue was earlier in issue before this court. Consent terms were filed. And pursuant to the consent terms, authority was required to determine eligibility of the petitioners herein for rehabilitation. That being the case, it is not open to the Petitioners now to once again contend that their structure stands on C.T.S. No. 1830 and C.T.S. No. 1832.

. It may be noted that the Petitioners had earlier filed writ petition being Writ Petition (St) No. 14363 of 2002. That petition was allowed to be withdrawn by order

dated 8.7.2002 with liberty to file fresh petition.

. The very petitioner thereafter filed writ petition being numbered as Writ Petition No. 3902, 3903, 3904, 3905, 3906, 3907, 3908, 3909, 3910 and 3911 of 2002. The parties agreed that the petition be disposed of in terms of what is set out in the order of this court dated 30.8.2002. Clause (1) and (2) of the said order reads as under :

(1) Respondent No. 7 has agreed to provide alternative transit accommodation to the petitioners within the period of two weeks from today. On such alternative accommodation being given, structure of the petitioner, if any, may be demolished ;by Respondent No. 7.

(2) Within three weeks from today, on alternative accommodation being provided, petitioners shall make an application to the Respondent No. 2 with all the documents on which they want to rely seeking accommodation in the scheme and on such application being made, Respondent No. 2 shall decide the eligibility of the petitioners to accommodation under the scheme under the Act in accordance with law within the period of eight weeks from the date on which

applications are submitted.

. From the above it is clear that the petitioners therein who are also petitioners in the present petition, had agreed that their case be considered by the competent authority for rehabilitation. This has also to be read with the finding recorded by the appellate authority wherein it was recorded that the structures of the Petitioners stood on the land declared as slum. Once this be the case, it will not be open to the petitioners herein to re-agitate the issue which has already been covered by the order of this court dated 30.8.2002.

. On behalf of the Petitioner, learned counsel contends that the Respondents have not complied with Clause (1) of the consent terms for providing alternative accommodation. ON behalf of the Respondents, learned counsel contends that the petitioner had moved the authority who have examined their case and have rejected their applications. In answer, counsel for the Petitioners, points out that the applications were withdrawn and consequently the competent authority has no jurisdiction to decide the said applications. It is not necessary for this court to go into that controversy. Suffice it to say, that if

the petitioners are still entitled to, it will be open to them to take steps in law to implement the order of this court dated 30.8.2002 if in law they are so entitled to.

. With above observations, petition stands disposed of. No order as to costs.

. All interim orders stand vacated.

. The learned counsel seeks stay of the order. In my opinion, no case made out for stay. Application for stay rejected.

(F.I. REBELLO,J.)